Date:         April 5, 2017

To:           Kenneth A. Jessell, Chief Financial Officer and Senior Vice President
              John Cal, Associate Vice President of Facilities Management

From:         Allen Vann, Chief Audit Executive

Subject:      Audit of the Construction of the Student Academic Success Center
              Report No. 16/17-11

We have completed an audit of the construction of the Student Academic Success Center. The primary objective of our audit was to determine if the selection process for the construction manager and architect conformed to applicable laws, regulations, and University policies and construction costs submitted by the construction manager were appropriate, properly supported and recorded and were in line with the contract terms.

The Student Academic Success Center provides “one stop services” to our students. Registration, financial services, career services and many other services are now collocated in this new facility. As of March 31, 2017, the approved funding for the entire project totaled $33.7 million, which includes construction costs of $26.7 million. In addition to the construction costs billed by the Construction Manager, the total project cost also include architect fees, furniture and fixtures, and other professional services. The construction phase of the project is 99.9% complete.

The Facilities Management Department properly awarded an architect engineering contract to Gould Evans and a construction management contract to Balfour Beatty Construction and satisfactorily monitored the related costs. Our report details payroll and multiplier costs that need to be reconciled with the Construction Manager prior to releasing the retainage. We also made other observations related to the subcontractors’ award process and maintenance of project files. Our audit resulted in four recommendations which management agreed to implement.

We would like to take this opportunity to express our appreciation for the cooperation and courtesies extended to us during this audit.

C:          FIU Board of Trustees
            Mark B. Rosenberg, University President
            Kenneth G. Furton, Provost and Executive Vice President
            Javier I. Marques, Chief of Staff, Office of the President
            Carlos Castillo, General Counsel
            Patrick D. Meagher, Director of Facilities Construction
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OBJECTIVES, SCOPE, AND METHODOLOGY

Pursuant to our approved annual plan, we have completed an audit of the University Major Construction Project, specifically Student Academic Success Center Capital Project. The primary objectives of our audit were to:

- Determine if the selection process for the construction manager (CM) and architect/engineer (A/E) was fair, competitive, and in accordance with applicable laws, regulations, and University policies and procedures;
- Determine if construction costs billed by the CM and paid by the University were appropriate, accurate, properly supported and recorded, and in compliance with University policies and procedures and the construction agreement;
- Determine if change orders were priced in accordance with the contract documents and did not duplicate work authorized and paid for under any other change order, trade contract, or the construction agreement;
- Determine if subcontractors were selected and managed in accordance with the construction agreement as well as University policies and procedures; and
- Evaluate the Facilities Management Department’s oversight of the construction project from start to finish, including adherence to the project timeline and budget.

Our audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* and included tests of the accounting records and such other auditing procedures as we considered necessary under the circumstances. Audit fieldwork was conducted from April to June 2016 and from October to December 2016.

During the audit, we:

- Reviewed the agreement between FIU (University) and the CM, University policies and procedures, and applicable laws and regulations;
- Examined project pay applications, payments support, contracts and any other documents related to the project, as well as CM’s project job cost ledgers related to payroll and subcontractors;
- Interviewed key FIU and CM personnel involved in the project;
- Visited the CM’s office; and
- Reconciled project funding source amounts and usages to FIU’s financial records and Facilities Management’s project ledgers.

Sample sizes and transactions selected for testing were determined on a judgmental basis.
BACKGROUND

The Student Academic Success Center consists of a 4-story Program building and a 2-story Auditorium building connected with an elevated plaza, totaling 94,476 gross square feet, which provides a one stop hub for the students. A central spot on the first floor is the new Welcome Center, where students find their OneStop shop, which includes Financial Aid, Registrar and Admissions. The Center incorporates the convenient PantherQ system and myVisit app that allows students to skip the long lines and register to receive text notifications when it is time for their appointment.

The building has five active learning classrooms, four with seating capacity of 48 and one with a seating capacity of 80. The building has many spaces where students can gather to study or socialize from indoor built-in benches to a large covered terrace on the ground.
floor. The building also has a large second floor breezeway and outdoor seating tiers with artificial grass that can be used for a class or an impromptu performance, all with access to outlets for recharging electronics.

The Auditorium building houses a two-story lecture hall with seating capacity of 729 with 8 ADA seats/spaces. Other student focused offices and departments housed in this new facility include:

- One Stop Services
- Student Financial Services
- Student Access and Success
- Study Abroad
- International Student and Scholar Services
- Career and Talent Development (formerly Career Services)
- Connect4Success
- Exploratory Advising Center
- First-Year Programs
- National Student Exchange
- Transfer and Transition Services

**Project Funding Budget Allocation**

As of March 31, 2017, the approved funding for the entire project totaled $33.7 million. More than 96% (32.4 Million) of the project funding was received from PECO\(^1\) and the remaining amounts came from the Technology Fee ($792,700) and two other funds ($508,650) from the Educational & General and Auxiliary. In addition to the construction costs billed by the CM, the total project cost covers for architect fees, furniture and fixtures, and other professional services.

The following chart details the project funding budget allocation.

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1 Florida’s Public Education Capital Outlay (PECO) program funds public higher education construction and maintenance projects.
Project Delivery Methodology

This project was delivered using the Construction Manager at Risk contract. Under this method, a construction manager takes part in the efforts of establishing the Guaranteed Maximum Price (GMP) prior to finalizing the design. The construction manager acts as the general contractor during construction, assuming the risk of subcontracting the work and guaranteeing the completion of the project within the GMP.

In accordance with an agreement with Balfour Beatty Construction (Construction Manager or CM), the CM performed the pre-construction services during the design phase and subsequently submitted a GMP proposal. The CM was paid the agreed upon lump sum amount of $180,000 for pre-construction services.

In October 2014, the first amendment to the CM agreement established the project GMP at $24,267,000. Subsequently, in March 2015 the GMP was increased to $24,475,000 by a second amendment. As of March 31, 2017, the revised GMP was decreased by $4,330,409 after change orders and deducting owner direct purchases as detailed below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original GMP</td>
<td>$24,267,000</td>
</tr>
<tr>
<td>Amendment #2</td>
<td>208,000</td>
</tr>
<tr>
<td>Revised GMP</td>
<td>$24,475,000</td>
</tr>
<tr>
<td>Change Orders</td>
<td>1,848,376</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$26,323,376</td>
</tr>
<tr>
<td>Direct Purchases</td>
<td>(6,178,785)</td>
</tr>
<tr>
<td>Net Total</td>
<td>$20,144,591</td>
</tr>
</tbody>
</table>

As of March 31, 2017, the construction phase of the project was 99.9% completed, and the University paid the CM $19,974,297 and withheld $147,677 as retainage. In addition to the retainage, there is a $22,617 balance (encumbered) to finish. It is anticipated that the project will be closed out shortly after the completion of our audit.
FINDINGS

Overall, our audit disclosed that the project was satisfactorily awarded and monitored by the University’s Facilities Management Department. However, there were areas that need improvement, particularly related to the CM’s payroll and employee fringe benefits costs, subcontractors’ bid and award process and maintenance of project files.

Our overall evaluation of internal controls is summarized below.

<table>
<thead>
<tr>
<th>INTERNAL CONTROLS RATING</th>
</tr>
</thead>
<tbody>
<tr>
<td>CRITERIA</td>
</tr>
<tr>
<td>Process Controls</td>
</tr>
<tr>
<td>Policy &amp; Procedures Compliance</td>
</tr>
<tr>
<td>Effect</td>
</tr>
<tr>
<td>Information Risk</td>
</tr>
<tr>
<td>External Risk</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INTERNAL CONTROLS LEGEND</th>
</tr>
</thead>
<tbody>
<tr>
<td>CRITERIA</td>
</tr>
<tr>
<td>Process Controls</td>
</tr>
<tr>
<td>Policy &amp; Procedures Compliance</td>
</tr>
<tr>
<td>Effect</td>
</tr>
<tr>
<td>Information Risk</td>
</tr>
<tr>
<td>External Risk</td>
</tr>
</tbody>
</table>
The areas of our observations during the audit are detailed below.

1. **Selection Process of Architect/Engineer and Construction Manager**

Our review of the project documentation disclosed that the selection of the Architect/Engineer (A/E) and Construction Manager (CM) for the project was fair, competitive, and in accordance with governing laws and regulations.

As part of testing, we reviewed the project file for documentation of the selection process for the A/E and the CM. The selection committee appointed to oversee the selection process for the A/E and CM services consisted of the following members:

<table>
<thead>
<tr>
<th>Selection Committee Members</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Architect/Engineer</strong></td>
<td><strong>Construction Manager</strong></td>
</tr>
<tr>
<td>1. Vice President, Enrollment Management</td>
<td>1. Associate Vice President, Facilities</td>
</tr>
<tr>
<td>2. Vice President, Student Affairs</td>
<td>2. Assistant Director, Custodial Services</td>
</tr>
<tr>
<td>3. Associate Vice President, Facilities</td>
<td>3. Project Manager, Facilities</td>
</tr>
<tr>
<td>4. Assistant Director, Custodial Services</td>
<td>4. Executive Director, Student Affairs</td>
</tr>
<tr>
<td>5. Project Manager, Facilities</td>
<td>5. Interim Associate Vice President, Enrollment Services</td>
</tr>
</tbody>
</table>

Each selection committee included five members, had at least two members who have knowledge of construction, and had at least one employee from the University Facilities Office, as required by the BOG Regulations 14.005, *Certification and Competitive Selection of Professionals* and 14.0055, *Certification and Competitive Selection for Construction Management Services and Design-Build Services*. Both selection committees also included two members from University departments that would occupy and/or utilize the facility upon completion.

Professional qualifications for architect services were received from 30 companies after the public notice and advertisement. The A/E selection committee ranked the companies from highest to lowest qualified, and then selected the top six applicants to interview. Based on interviews, the selection committee evaluated each application and ranked them from highest to lowest qualified. A committee recommendation which ranked Gould Evans as the top candidate was made to the University President. In April 2009, the University entered into an agreement with Gould Evans (A/E) for basic A/E services for this project in the amount of $1,490,468. In March 2013, an amendment decreased this amount to $1,277,447.

Qualifications for CM services were received from 19 companies after the public notice and advertisement. The CM selection committee ranked the companies from highest to lowest qualified, and then selected the top four applicants to interview. Once interviews were completed, the selection committee evaluated each application and ranked them from highest to lowest qualified. A committee recommendation which ranked Balfour Beatty Construction as the top candidate was made to the University President. In January 2012, the University entered into an agreement with Balfour Beatty Construction to proceed with pre-construction services for the Student Academic Success Center in the amount of $180,000.
2. **Review of Construction Pay Requests**

Our review of project invoices with supporting documentation identified charges that represent departures from contract terms and conditions, which need be reconciled with the CM during the project closeout. More detail information are noted below.

**a) Employee Leave Benefits**

The CM charged the University $37,855 for the excess hours worked by its exempt employees during pay periods for which leave times occurred. According to Article 9.2 of the CM agreement, the Cost of the Work is limited to actual expenditures for wages paid for labor in the direct employ of the CM working for the project. The Article also states that employee holiday, vacation and/or sick leave benefits shall not be considered reimbursable labor or labor burden costs and will be included as part of the CM’s lump sum fee.

We reviewed the CM’s timesheets and certified payroll reports for its exempt employees assigned to the project and noted that the exempt employees’ wages were paid biweekly based on 80 hours maximum including leave time. As part of testing, we examined the CM’s payroll costs paid by the University for the pay period ending January 4, 2015 through December 20, 2015. Our test disclosed that the CM deducted the employees’ leave hours from the total hours reported and billed the University for the remaining hours, although the total hours reported exceeded 80 hours. For example, the CM’s timesheets showed that an exempt employee reported a total of 102 hours during a pay period, which included 24 hours of leave time. However, the University was billed and paid for 78 hours instead of 56 hours. As a result, the University overpaid the CM for 22 hours of this employee’s leave time.

**b) Employee Overtime Pay**

The CM charged the University $20,013 for its employees overtime cost without obtaining prior written approval from the University. Article 9.2.1.3 of the CM agreement states, “Overtime wages paid to Construction Manager’s employees will be reimbursed…provided such overtime wages have been pre-approved by Owner in writing.”

We reviewed the CM’s timesheets and certified payroll reports for the pay periods ending January 4, 2015 through December 20, 2015. Our review disclosed that the CM Project Accountant’s 367 overtime hours costing $20,013 were charged to the University. According to the CM’s timesheets, the Project Accountant was initially classified as an exempt employee, and did not qualify for overtime pay. Subsequently, the CM changed his employment status to non-exempt and charged the University for his overtime throughout the project.

Upon our inquiry, the University Project Manager informed us that the payment of the overtime hours were verbally approved prior to the work being performed.
c) Part-time Employees

Per article 8.2.1 of the CM agreement, the costs for CM’s staff at the job site that is not full-time shall be deemed included in the CM’s lump sum fee. We selected and reviewed the CM’s payroll costs paid by the University for the calendar year 2015. Our review disclosed that the CM charged the University $147,359 for the actual cost of its nine employees who worked part-time at the job site.

According to the University Project Manager, the job disciplines for three of the nine employees’ payroll costs totaling $190,970 were listed as part of general conditions costs of the GMP; therefore, their part-time working status was approved. These employees’ payroll costs were for the period of 18 months instead of 12 months we reviewed.

d) Employee Fringe Benefits Multiplier

Article 9.2.1 of the CM agreement states, “To cover the fringe benefits a “Multiplier” times the wages will be considered a reimbursement cost and will be used for billing purposes only. The Multiplier shall be defined as the employer’s net actual cost of payroll taxes...” The article also states that the CM shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the actual maximum wages subject to payroll taxes and the percentage used for the multiplier may be examined and adjustment will be made for any overstated costs included in the billed multiplier.

As part of the CM’s billed multiplier of 40%, payroll taxes comprised 13.65%, which was made of:

- 6.20% for Social Security Tax (maximum annual wage of $118,500 per employee in 2015);
- 1.45% for Medicare Tax (no limit);
- 0.60% Federal Unemployment Tax (maximum annual wage of $7,000 per employee); and
- 5.40% State Unemployment Tax (maximum annual wage of $7,000 per employee).

Our review of the CM’s payroll costs for the 2015 calendar year revealed that the University was overcharged $34,948 in additional payroll taxes because the CM did not reduce its standard payroll tax percentages to properly reflect the actual maximum wages subject to payroll taxes. For example,

- $1,113 additional social security taxes were charged for two employees whose annual salary exceeded the social security wage limit of $118,500.

- $30,452 and $3,383 were charged for 18 employees in additional state and federal unemployment taxes, respectively. Instead of the first $7,000 of earnings, their entire payroll cost was applied to the respective rates noted above.
The University Project Cost Accountant indicated that the multiplier the CM charged will be reconciled and adjusted at the project closeout.

3. Change Orders and Direct Purchases

The Guaranteed Maximum Price (GMP) can be modified for changes in the work within the general scope of the agreement between the CM and the Owner consisting of additions, deletions, or other revisions. As of November 30, 2016, the project had forty-two change orders throughout the project. Fifteen of these were direct purchase orders (DPOs), which reduced the GMP by approximately $6.2 million, and the remaining twenty-seven were change orders that increased the GMP by approximately $1.8 million.

We reviewed the supporting documentation for 100% of the DPOs and twenty-one change orders, totaling $1.7 million or 93% of the total dollar amount of change order additions. Our review disclosed that all of them were properly supported, reviewed and approved by the CM, the A/E and the University. In addition, none of the work authorized in the change orders reviewed duplicated under any other change order, trade contract, or the construction agreement. We also noted that there were sales tax savings of $281,400 as a result of the DPOs.

4. Subcontractors Awarded Without Competitive Selection

To determine if subcontractors were selected and managed in accordance with applicable Florida Board of Governors (BOG) regulations, University policies and procedures, and the CM agreement, we examined bid documentation for all trades kept at the CM’s office as well as project files stored at the Facilities Management Department (FMD).

We reviewed the Schedule of Values as of November 30, 2016 and noted 43 subcontractors with contracts totaling $16,390,110. We selected 20 subcontractors with contracts totaling $13,932,055 for testing and found that four subcontractors were paid a total of $218,361 but were not selected by the CM using competitive bids or quotations.

<table>
<thead>
<tr>
<th>Name of Subcontractors</th>
<th>Description of Work</th>
<th>Contract Amount</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pacesetter Temporary Personnel Services</td>
<td>Rough Carpentry</td>
<td>$ 97,779</td>
<td>$ 97,962</td>
</tr>
<tr>
<td>E. R. Bownell</td>
<td>Surveying</td>
<td>51,623</td>
<td>48,988</td>
</tr>
<tr>
<td>S&amp;S National Waste</td>
<td>Trash Chutes</td>
<td>49,607</td>
<td>49,707</td>
</tr>
<tr>
<td>MWI</td>
<td>Dewatering</td>
<td>21,704</td>
<td>21,704</td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td></td>
<td><strong>$220,713</strong></td>
<td><strong>$218,361</strong></td>
</tr>
</tbody>
</table>

Article 3.3.3 of the CM agreement requires the CM to “Take competitive bids on the Work of the various Trade Contractors; or, if authorized by the Owner, in writing in accordance with Chancellor’s Memorandum CM-N-08.01-01/99 negotiate for the performance of that Work.” BOG Regulation 14.002 (2) also states, “Trade contracts are awarded by the
construction manager based on competitive bids received in response to invitations to bid issued by the construction manager.”

The CM’s Project Manager informed us that the works listed above were considered miscellaneous general conditions items and not included in the project bidding process. However, the CM did not obtain a written authorization from the University allowing them to negotiate for the performance of the works listed above in lieu of taking competitive bids for the works.

5. University Oversight

The Construction Services Section of the University’s Facilities Management Department oversees the complete administration of projects in the capital construction program of the University. The Section works closely with architectural and engineering consultants and construction companies for the completion of new construction and refurbishment projects. Typical projects include design, construction, demolition, remodeling, and renovation of a variety of buildings as well as site improvements and infrastructure. Each construction project is assigned to a project manager who oversees the project from initiation to closeout and is responsible for maintaining project files.

Our observations in this area are discussed below:

a) Establishment of Guaranteed Maximum Price (GMP)

We reviewed the GMP development documentation for the project maintained by the Facilities Management Department (FMD). FMD worked diligently to reduce the original GMP of $25,928,168 proposed by the CM in June 2014. In fact, FMD rejected the initial proposal and hired a third party cost consultant, Atkins, who worked with the University Project Manager, the A/E and the CM to develop value engineering which resulted in a reduced proposed GMP of $24,428,435, including the Owner's contingency. In October 2014, an amendment to the CM agreement established the GMP at $24,267,000. We commend FMD for their efforts in working with the other project professional to reduce the original GMP proposed by the CM.

b) Maintenance of Project Files

Chancellor’s Memorandum CM-N-08.01-01/99 states, “While the bid openings are not required to be public, a university representative must be present when bids received by the construction manager are opened by the construction manager. The university instructs the construction manager to provide a letter of recommendation for award of each bid package, the letter of recommendation from the architect/engineer, a copy of the bid tabulation form and a copy of each bid proposal. The university maintains this information on file for audit purposes.” Article 3.3.3 of the CM agreement requires the CM to prepare and submit written recommendations to the Owner and the A/E for award of Trade Contracts by the CM. Also, the article requires the CM to provide copies of the fully executed trade contracts, insurance certificates and, if required, bonds to the Owner.
We reviewed the project files stored at FMD to determine if copies of the documents required under the Chancellor’s Memorandum and the CM agreement were being maintained. The following documents were missing from the FMD project files during our audit:

- The formal documentation, such as bid opening attendance sheet or meeting minutes, to support that the University representative was present at the bid openings. The former University Project Manager informed us that the A/E and the University representative attended the bid opening.

- Written recommendations from the CM to the University for award of each bid package.

- Documentary evidence of the University’s approval of the CM’s awarded bid packages.

- Copies of the bid tabulation forms, bid proposals, fully executed trade contracts, insurance certificates, and bonds.

To determine if the missing documents are available at the CM’s location, we visited the CM’s corporate office on November 2, 2016 and reviewed project files related to subcontractors awarding process. We noted that the CM’s project files did not contain copies of the written recommendation letters for awarding trade contracts; the attendance sheet or meeting minutes to document who attended the subcontractor bid openings; and the awarded subcontractors’ certificates of insurances and bonds. While the CM maintained copies of the subcontractor bid tabulation forms, bid proposals and executed trade contracts, the CM’s Project Accountant informed us that the University had not requested copies of these documents. He also informed us that trade contractor award recommendation letters were not submitted to the University and the A/E as the CM was not aware of this requirement.

c) Closeout Documents

According to Article 12.1.2 of FIU’s General Terms and Conditions, the CM shall deliver to the A/E substantial completion closeout documentation, which includes:

- All operation and maintenance manuals.
- All written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the work, endorsed, countersigned, and assigned as necessary.

- Releases, bonds, waivers and other documents necessary for final close-out Work.
The Certificate for Payment Request approved by the CM, the A/E and the University noted the project’s substantial completion date as May 31, 2016. Six different temporary certificates of occupancy were issued from July 28 through September 30, 2016 and the final certificate of occupancy date was on October 31, 2016. The users began moving into the building during the week of July 25, 2016. In January 2017, we reviewed project files and noted that the closeout documentation was unavailable despite more than five months after the users moved into the building. Upon our inquiry, the University Project Manager informed us that these documents were received the first week of February 2017.
RECOMMENDATIONS

The Facilities Management Department should:

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<table>
<thead>
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</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Take necessary steps to reconcile with the construction manager payroll related costs and multiplier prior to closeout and releasing retainage.</td>
</tr>
<tr>
<td>1.2</td>
<td>Closely monitor the construction manager’s payroll costs to ensure that the University does not pay: (a) vacation and other leave time indirectly; and (b) overtime without written pre-approval.</td>
</tr>
<tr>
<td>1.3</td>
<td>Ensure that the construction manager take competitive bids on the work of all trade contractors, or negotiate for the performance of that work, if authorized by the University in writing.</td>
</tr>
<tr>
<td>1.4</td>
<td>Timely obtain and maintain all project related documentation such as subcontractors’ bid and award and closeout documents.</td>
</tr>
</tbody>
</table>

Management Response/Action Plan:

1.1 We concur with the recommendation. Closeout negotiations continue with the CM, who has agreed to issue a credit for the amount overpaid in fringe benefits, as required by the contract. Based on our most current information, the overcharge is $106,400.39 for the entire project (November 2014 to August-2016). Final payment is contingent on resolution of this matter.

   Implementation date: July 2017

1.2 We concur with the recommendation. Moving forward we will continue to monitor monthly Pay Applications to ensure we do not pay for leave time. In addition, we will continue to enforce that overtime is to be pre-approved in writing, and amend the contract on a project to project basis when part-time employees are necessary.

   Three of the part-time employees were allocated in writing as part of the negotiated GMP’s salaried payroll, totaling $119,373. This was documented and accepted at the beginning of the project. In addition, part time was verbally approved by the FIU project manager at the beginning of the project. Written confirmation for these part-time employees was further confirmed on each pay application. We had multiple change orders that required scheduler and cost estimating personnel. By allowing part time allocation for these employees versus full time we saved funds. Part time was approved for the benefit of the project. Overtime for this specific project was verbally approved by the FIU project manager at the beginning of the project during
meetings, and discussed at FIU with the former Construction Cost Accountant at that time. Written confirmation was further confirmed on each pay application approved.

Implementation date: July 2017

1.3 We concur with the recommendation. Competitive bids solicitation and sole bidder negotiations will be better documented. For this specific project, Balfour Beatty considered each contract in question to be in the General Requirements category: surveying, dewatering, waste removal and temporary labor contracts. The CM established budgets for these services based on cost history and experience, setting unit price agreements with the sub-contractors.

Implementation date: Immediately

1.4 We concur with the recommendation. FMD will ensure that the proper documentation for subcontractor’s bid and award processed are maintained. FMD will also ensure that all close out documents are delivered in a timely manner.

Implementation date: July 2017